

## UNIT 38 PRICING INFORMATION FROM OFFERORS

### UNIT CERTIFICATION

#### Statement of Completion

\_\_\_\_\_ has satisfactorily completed on-the-job training in the duty or duties of this Unit under the conditions described below and in accordance with the overall standard(s) for this Unit.

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#### Certification for Part A: Competitive Procurements

<b>Duty</b>	Determine the pricing information (if any) to request of offerors
<b>Conditions</b>	Given adequate price competition.
<b>Overall Standard(s)</b>	Do NOT require submission of cost or pricing data if adequate price competition is expected before award. Following the closing date for proposals, accurately determine the applicability of the “adequate price competition” exception.
<b>Evaluator</b>	Name _____
	Title _____
	Date _____

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#### Certification for Part B: Other Contract Actions

<b>Duty</b>	Determine whether to require: <ul style="list-style-type: none"><li>• No information from the offeror.</li><li>• Information other than cost or pricing data.</li><li>• Cost or pricing data.</li></ul>
<b>Conditions</b>	Absent adequate price competition.

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<b>Overall Standard(s)</b>	<p>Do NOT require cost or pricing data if an exception applies or if the head of the contracting activity waives the requirement.</p> <p>To establish the reasonableness of the offered price, do NOT obtain more information than is necessary. To the extent permitted by FAR §15.804-2 and §15.804-5(b), use the following order of preference in determining the type and source(s) of information necessary to establish a fair and reasonable price.</p> <ul style="list-style-type: none"><li>• No further information from the offeror if the price is based on adequate price competition, <b>except as provided by 15.804-5(a)(3)</b>.</li><li>• Price-related information from sources other than offerors (relying first on information available within the Government and second on information obtained from sources other than the offeror).</li><li>• Only if necessary, information related to prices (e.g., established catalog or market prices) from the offeror.</li><li>• Only if necessary, cost information which does not meet the definition of cost or pricing data at 15.801.</li><li>• Cost or pricing data.</li></ul>
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<b>Evaluator</b>	Name	_____
	Title	_____
	Date	_____

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**\$** Cost or pricing data are now the data of LAST resort, rather than the data of FIRST resort, in cost and price analysis. In fact, the FAR prohibits contracting officers from obtaining cost or pricing data if an exception applies. Even if an exception does not apply, the FAR strongly encourages a waiver if price reasonableness can be determined without resorting to cost or pricing data. Why? Because reliance on cost or pricing data when such data are not necessary:

- Increases proposal preparation costs
- Generally extends acquisition lead-times, and
- Wastes both contractor and Government resources.

[§15.804-1, FAC 90-32, Case 94-721]

**\$** Hence, the FAR establishes a new order of priority for information to determine price reasonableness. To the extent permitted by FAR §15.804-2 (requirements for cost or pricing data) and §15.804-5(b) (requirements for information other than cost or pricing data to support commercial item exceptions), generally use this order of priority in determining the type of information required:

1. No further information **from the offeror** if the price is based on adequate price competition “**except as provided by 15.804-5(a)(3)**”.

§15.804-5(a)(3) authorizes **contracting officers** to **request** cost realism data from offerors. §15.804-5(a)(3) also authorizes requests for additional

## UNIT 38 PRICING INFORMATION FROM OFFERORS

information from offerors necessary to determine price reasonableness after seeking the necessary information from sources other than the offeror “to the maximum extent practicable”.

2. Price-related information from sources other than offerors (relying first on information available within the Government and second on information obtained from sources other than the offeror).
3. Price-related information from the offeror.
4. Cost information from the offeror which does not meet the definition of cost or pricing data at FAR §15.801.
5. Cost or pricing data. However, if the expected price exceeds the dollar threshold for requiring such data and no exception applies and a waiver is not granted, then you must obtain cost or pricing data.

[§15.802, FAC 90-32, Case 94-721]

This order of preference does NOT create an actionable right for an offeror, in terms of refusing to provide required information. The order of preference establishes a policy that should be followed to make the procurement system more efficient. However, BEFORE obtaining necessary data from sources that are lower in priority than other sources, contracting officers are NOT required to exhaustively research information available from the higher priority sources. For example, if necessary information is available from sources outside the Government, contracting officers can pursue that information directly if comparable information is not readily available either in the contracting activity or any other Government source. More importantly, if no exception applies and the action is over the cost or pricing data threshold, contracting officers MUST (absent a waiver) obtain cost or pricing data from the contractor without regard for information available elsewhere.

# UNIT 38 PRICING INFORMATION FROM OFFERORS

## Policies RESERVED

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>

## Related Knowledge

1. Knowledge of sources of data on market prices, market segmentation, product differentiation, and market measurement and forecasting; skill at forecasting market prices and analyzing the pricing decisions of business entities (from Marketing and Economics).

## 2. Knowledge of the differences between “cost or pricing data” and “information other than cost or pricing data”.

*Information other than cost or pricing data* means any type of information that is not required to be certified, in accordance with 15.804-4, that is necessary to determine price reasonableness or cost realism. This information can include pricing, sales or cost information. Because this information is NOT “cost or pricing data,” you may NOT require offerors to submit a certificate of current cost or pricing data. The term also includes data submitted in anticipation of satisfying a requirement for cost or pricing data if, after submission, the contracting officer determines that an exception applies or that the requirement has been waived.

Currently, the FAR uses the term “limited or partial data” for the same purpose. However, the term was never defined as such. Moreover, the FAR only allowed contracting officers to “request” such data. Now, contracting officers can require submission of “information other than cost or pricing data”. [§15.801, FAC 90-32, Case 94-721]

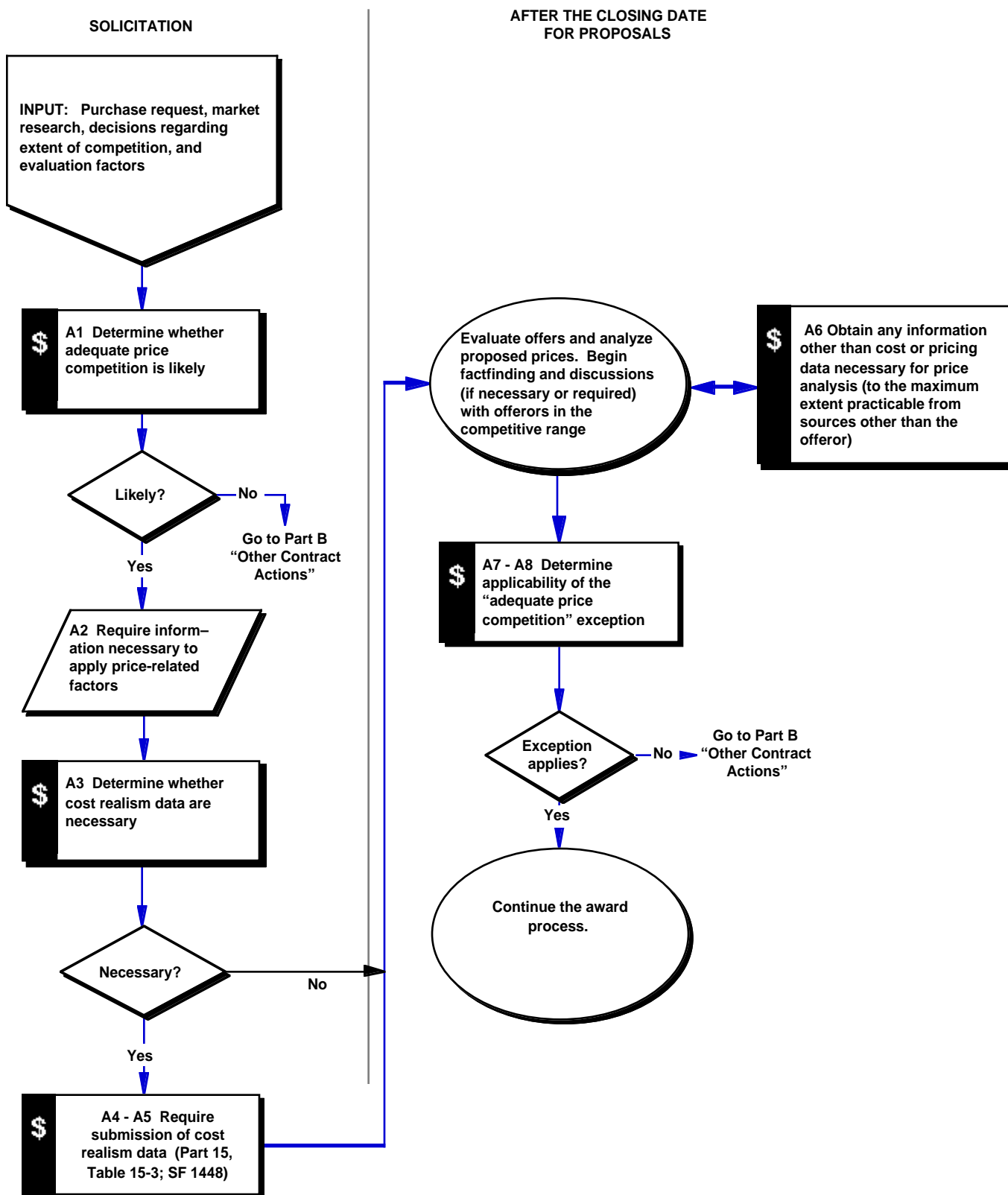
## 4. Knowledge of the definition of “cost or pricing data”.

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## Other Policies and References (Annotate As Necessary):

**\$** No more commercial pricing certificates!!! (15.813 now reserved). (94-721)

## Part A. Cost Realism & Pricing Information for Competitive Procurements



# UNIT 38 PRICING INFORMATION FROM OFFERORS

## Part A: Competitive Procurements

### Tasks

### Related Standards

<p>1. Determine whether adequate price competition is expected.</p> <ul style="list-style-type: none"> <li>You expect independent proposals from two or more responsible offerors.</li> <li>Award will be made to a responsible offeror whose proposal offers either— <ul style="list-style-type: none"> <li>The greatest value (see 15.605(c)) to the Government and price is a substantial factor in source selection or</li> <li>The lowest evaluated price.</li> </ul> </li> </ul>	<p>A1. If you expect “adequate price competition” prior to soliciting, do not require the submission of cost or pricing data with proposals.</p>
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**\$** The FAR expressly incorporates the principle established by the Comptroller General that price competition can be deemed adequate even when award is based on “greatest value”, as long as price is a “substantial factor”. What is substantial? A matter of judgment. The question is whether price was enough of a factor to cause offerors to “sharpen their pencils” in pricing their unique approach to the work. [§15.804-1(b)(1), FAC 90-32, Case 94-721]

<p>2. In the solicitation, require submission of any information necessary to apply price-related factors stated in the solicitation.</p>	<p>A3. See the Unit on Price-Related Factors.</p>
<p>3. Determine whether cost realism data are necessary.</p>	<p>A3. Require such data when necessary to determine the cost realism of competing offers or apply non-price evaluation factors.</p>

**\$** For the first time, the FAR defines the term “cost realism” and authorizes contracting officers to request information “**to determine the cost realism of competing offers or to evaluate competing approaches**”. [§15.801 and 15.804-5(a)(3), FAC 90-32, Case 94-721]

### *Cost Realism*

“**Cost realism means the costs in an offeror's proposal are (a) realistic for the work to be performed; (b) reflect a clear understanding of the requirements; and (c) are consistent with the various elements of the offeror's technical proposal.**” [§15.801, FAC 90-32, Case 94-721]

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## Part A: Competitive Procurements

### Tasks

### Related Standards

Why does the Government care if a low offer is realistic? Because an unrealistic price puts both parties at risk. The risk to the Government is that the seller — to cut its losses — might:

- Cut corners on product quality
- Deliver late
- Default, forcing a time-consuming, costly reprocurement
- Refuse to deal with the Government in the future
- Be forced out of business entirely

Hence, the purpose of price or cost analysis is not only to determine whether an offered price is reasonable, but also to determine the offeror's understanding of the work and ability to perform the contract. An offered price may be unexpectedly low because the seller has made gross mistakes in estimating costs, or taken too many risks in estimating costs because of the pressures of the competition, or is otherwise nonresponsible. The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that Government purchases be made at the lowest evaluated price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.

On the other hand, below-cost prices are not necessarily unfair or an indication of nonresponsibility. "A bidder, for various reasons, in its business judgment may decide to submit a below-cost bid; such a bid is not invalid. ... Whether the awardee can perform the contract at the price offered is a matter of responsibility." (Comp. Gen. Decision B-238877, Matter of: Diemaster Tool, Inc., April 5, 1990). The question is whether the contractor is willing, able, and ready to satisfactorily perform at the offered price.

Prior to the Streamlining Act, subpart 15.8 was silent on the matter of "cost realism" (although cost realism had been addressed in subpart 15.6).

### *Evaluating a Technical Approach*

Why might a contracting officer request price-related information to evaluate a proposed technical approach? Because such information may be necessary to validate that the proposed costs are consistent with the technical proposal. In some acquisitions, the test of reasonableness is whether an offered price represents the "best value" for the Government's dollar, considering both price-related factors and also such non-price factors as the relative technical capabilities of the competing firms and the relative performance risks of each offer. Information on the contractor's pricing is often necessary to apply such non-price factors.

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## Part A: Competitive Procurements

### Tasks

### Related Standards

<p>4. Determine the extent and types of cost realism information to require of the offeror.</p> <p>Example</p> <ul style="list-style-type: none"> <li>Information adequate to validate that the proposed costs are consistent with the technical proposal.</li> <li>Cost breakdowns to help identify unrealistically low cost proposals.</li> </ul>	<p>A4. Correctly identify all information necessary to validate that the proposed costs are consistent with the technical approach. Identify the most significant, probable cost drivers. Develop requirements for cost breakdowns which will obtain only that information necessary to determine whether the low cost proposal is realistic given those cost drivers.</p>
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**\$** The FAR in the new Table 15-3 provides examples of “cost realism” information, e.g., “information adequate to validate that the proposed costs are consistent with the technical proposal, or cost breakdowns to help identify unrealistically **priced** proposals.” [Table 15-3, FAC 90-32, Case 94-721]

<p>5. Include instructions in the solicitation for submitting cost realism information.</p> <ul style="list-style-type: none"> <li>Draft a description of the specific information to be submitted.</li> <li>Determine whether or not to require the SF 1448 as a cover sheet.</li> <li>Provide for access to firm’s records if not provided by <b>the use of a standard form</b> (e.g., SF 1448) <b>or clause</b>.</li> <li>Determine whether or not to require a common format for data submission or allow each firm to use its own format</li> </ul>	
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**\$** The new Standard Form 14**48** is a cover sheet for use by offerors to submit information to the Government when cost or pricing data are not required but the contracting officer has requested information to help establish cost realism. Information submitted by offerors with this form is NOT considered cost or pricing data and shall NOT be certified in accordance with 15.804-4. On the other hand, the SF 1448 for the first time provides the Government with the right to “examine, at any time before award, any of those books, records, documents, or other records directly pertinent to the information requested or submitted.” See the new FAR Table 15-3 for instructions on the SF 1448. [§15.804-6, Table 15-3, and SF 1448, FAC 90-32, Case 94-721]

**\$** Generally use the contractor’s format for cost realism data unless the contracting officer determines that a specific format is essential (e.g., to enter data into automated analysis programs). The Government should find ways of working with the data that firms collect and keep for commercial purposes rather than forcing contractors to go through the expense of retailoring their systems or setting up parallel systems for the Government. [§15.804-5(a)(2), FAC 90-32, Case 94-721]



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## Part A: Competitive Procurements

### Tasks

### Related Standards

<p>6. Obtain information other than cost or pricing data to:</p> <ul style="list-style-type: none"><li>• Determine the need for discussions (if discussions are not required by the award clause).</li><li>• Establish prenegotiation positions on price.</li><li>• Determine the realism of proposed prices.</li><li>• Determine that the price of the proposal in line for award is fair and reasonable.</li><li>• Determine whether the price competition was adequate.</li></ul>	<p>A6. Identify all relevant information collected previously from market research and acquisition histories. If additional information is necessary, obtain the information from sources other than the offeror to the maximum extent practicable.</p> <p>Even when you expect “adequate price competition”, § 15.804-5(a)(3) authorizes requests for additional information from offerors if necessary to support a determination of price reasonableness after, “to the maximum extent practicable”, seeking the information from sources other than the offeror.</p> <p>§ 15.804-5(a)(3) also authorizes requests for cost realism information — including information over and above that required by the solicitation. For instance, if the solicitation had not requested cost realism information, you can still require such information after the proposal closing date to resolve apparent mistakes in offers.</p> <p>If discussions are necessary or required by the solicitation, obtain additional information related to apparent proposal deficiencies during factfinding and negotiations (see the Units on Price Analysis, Factfinding, Negotiation Strategy, and Conducting Negotiations).</p>
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**\$** When an acquisition is based on adequate price competition, contracting officers generally should need no additional information to develop prenegotiation positions on price beyond that collected from market research and acquisition histories. However, if additional information is necessary for that purpose, obtain the information from sources other than the offeror to the maximum extent practicable. [§15.802 and §15.804-5(a)(3), FAC 90-32, Case 94-721]

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## Part A: Competitive Procurements

### Tasks

### Related Standards

<p>7. Determine whether the price competition was adequate.</p> <ul style="list-style-type: none"><li>• Two or more responsible offerors, competing independently, have submitted priced offers responsive to the Government's expressed requirement.</li><li>• No finding, supported by a statement of the facts and approved at a level above the contracting officer, that the price of the otherwise successful offeror is unreasonable.</li></ul>	<p>A5. Correctly apply the standards in FAR 15.804-1(b)(1)(i).</p>
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**\$** “Price reasonableness” remains the most critical test of the adequacy. Based on price analysis, contracting officers may find that the price of the otherwise successful offeror is unreasonable. If that finding (along with the mandatory statement of facts) is approved at a level above the contracting officer, then the adequate price competition exception does NOT apply. [§15.804-1(b)(1)(i), FAC 90-32, Case 94-721]

**\$** There is no longer an automatic presumption of inadequacy if “the solicitation was made under conditions that unreasonably denied to one or more known and qualified offerors an opportunity to compete”. Likewise, there is no longer an automatic presumption of inadequacy if “the low offeror has such a decided advantage that it is practically immune from competition”. These may be among the reasons for questioning the price of the otherwise successful offeror. But they are no longer reasons, in and of themselves, for requiring certified cost or pricing data. [§15.804-1(b)(1), FAC 90-32, Case 94-721]

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## Part A: Competitive Procurements

### Tasks

### Related Standards

<p>8. If only one offer is received, determine whether the offeror nonetheless qualifies for the “adequate price competition” exception.</p> <p>The exception applies under either of the following circumstances.</p> <ul style="list-style-type: none"><li>• The offered price is “based on” previous adequate price competition (see Part B)</li><li>• You can reasonably conclude that the offer was submitted with the expectation of competition, e.g.,—<ul style="list-style-type: none"><li>- The offeror believed that at least one other offeror was capable of submitting a meaningful, responsive offer.</li><li>- The offeror had no reason to believe that other potential offerors did not intend to submit an offer.</li></ul></li></ul>	<p>A8. Correctly apply the standards in FAR 15.804-1(b)(1) (ii) or (iii).</p> <p>If the contracting officer determines that the only offer received had been submitted with the expectation of competition, the determination must be approved at a level above the contracting officer that the proposed price is based on adequate price competition and is reasonable.</p>
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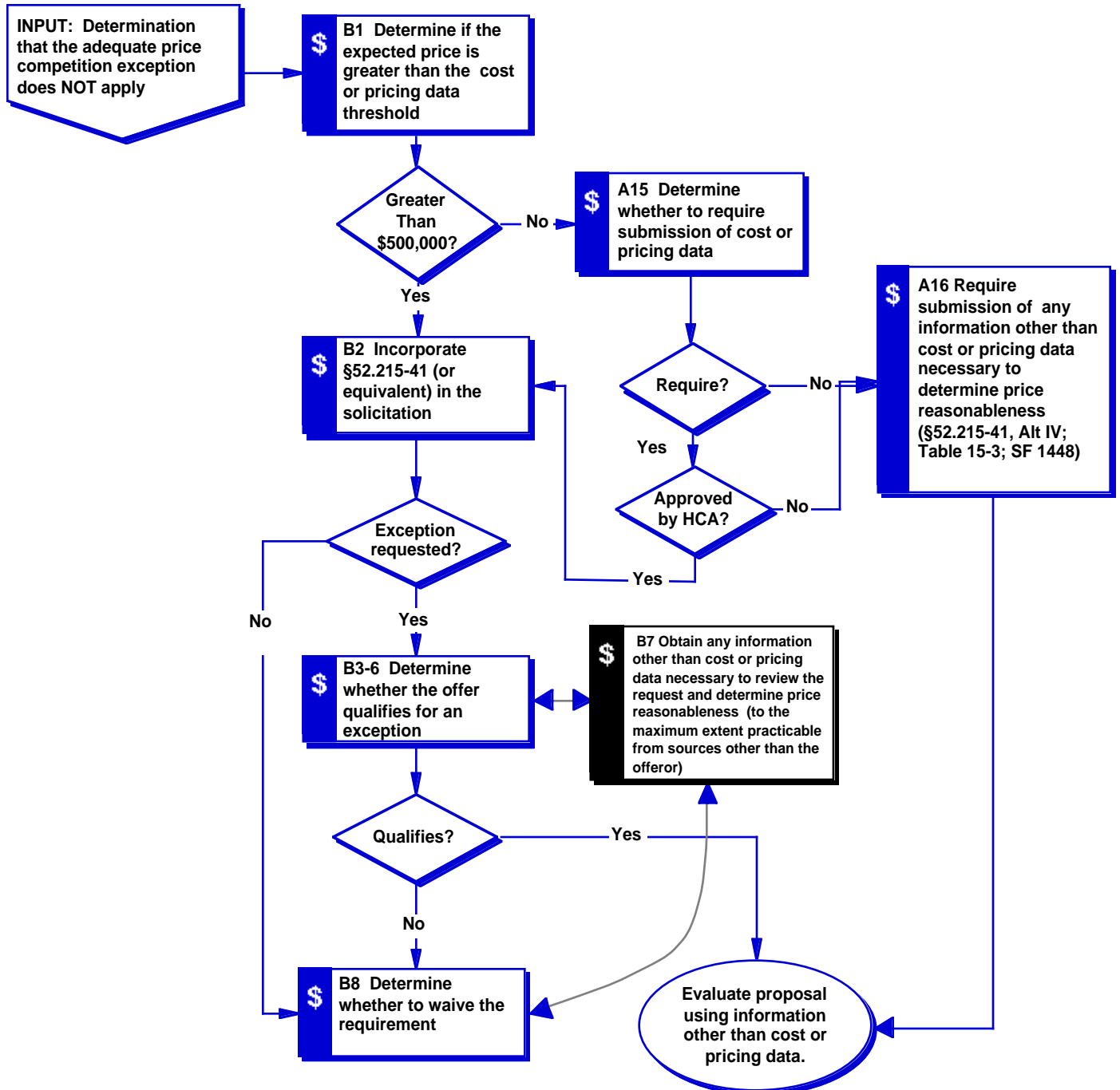
**\$** When only one offer is received contrary to expectations and price reasonableness cannot be determined by reference to a prior competition, contracting officers are now authorized to determine that the price competition was adequate if they can reasonably conclude that:

- The offeror believed that at least one other offeror was capable of submitting a meaningful, responsive offer.
- The offeror had no reason to believe that other potential offerors did not intend to submit an offer.

If, in such circumstances, the contracting officer determines that the proposed price is based on adequate price competition and is reasonable, that determination must be approved at a level above the contracting officer. [§15.804-1(b)(1), FAC 90-32, Case 94-721]

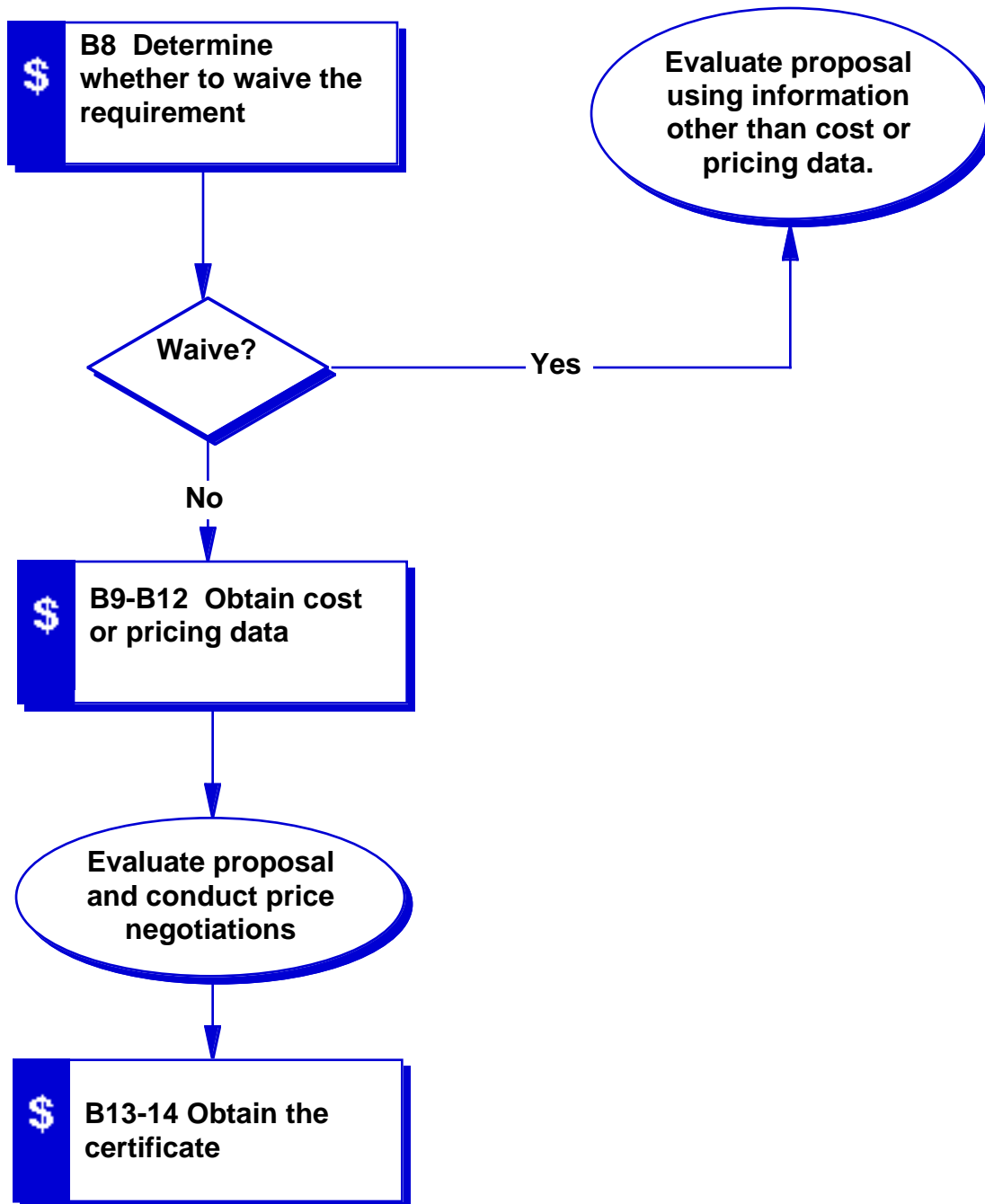
**\$** The FAR reaffirms that contracting officers shall require cost or pricing data after the receipt of offers if **at that time** it becomes apparent that no exception applies for a contract action over the dollar threshold at which such data are required. [§15.804-5(c), FAC 90-32, Case 94-721].

## Part B. Other Contract Actions



*Flowchart continued on next page*

*Flowchart continued from prior page*



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## Part B: Other Contract Actions

### Tasks

### Related Standards

1. Determine whether the price of the contract action is likely to exceed the dollar threshold (currently \$500,000) for cost or pricing data.	B1. Accurately apply rules for determining whether the contract action exceeds the dollar threshold. <ul style="list-style-type: none"><li>• Negotiated procurements.</li><li>• Any modification to a contract involving an aggregate price adjustment in excess of the dollar threshold.</li><li>• Subcontracts exceeding the dollar threshold where the higher tier is required to submit cost/pricing data.</li><li>• Any modification to a subcontract involving an aggregate price adjustment in excess of the dollar threshold.</li></ul>
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**\$** The threshold for obtaining cost or pricing data is \$500,000 for all agencies. This amount will be subject to adjustment at five years intervals (with the first interval beginning on October 1, 1995). The new threshold applies only to prospective contract actions and does NOT affect the Government's rights regarding previously certified actions. (§15.804-2, FAC 90-22)

**\$** If requested by the prime contractor, contracting officers shall modify contracts to change the threshold in the contract to the cost or pricing data threshold in 15.804-2(a)(1), without requiring consideration, and prime contractors can then likewise modify their subcontracts. (FAC 90-22)

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## Part B: Other Contract Actions

### Tasks

### Related Standards

<p>2. Specify data submission requirements.</p> <ul style="list-style-type: none"> <li>• By incorporating the provision at 52.215-41, or</li> <li>• By referencing the clause at 52.215-42 for contract modifications.</li> </ul> <p>Use Alternate I to specify a special format for cost or pricing data to be submitted with SF 1411.</p> <p>Use Alternate II when copies of the proposal are to be sent to the administrative contracting officer and contract auditor.</p> <p>Use Alternate III to require submission via electronic media.</p> <p>Use Alternative IV if, prior to soliciting, the contracting officer has determined that:</p> <ul style="list-style-type: none"> <li>• An exception may apply (e.g., under a prior agreement on repetitive acquisitions), and</li> <li>• Information from the offeror “other than cost or pricing data” is necessary to determine price reasonableness.</li> </ul>	<p>B2. Indicate:</p> <ul style="list-style-type: none"> <li>• That cost or pricing data are required.</li> <li>• That, in lieu of submitting cost or pricing data, the offeror may submit a request for an exception from the requirement to submit cost or pricing data.</li> <li>• Requirements for access to offeror’s records if not provided by <b>the use of a standard form or clause.</b></li> <li>• The format for submitting cost or pricing data.</li> </ul>
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### \$ Contracting officers must specify:

- That cost or pricing data are required.
- That, in lieu of submitting cost or pricing data, the offeror may submit a request for an exception from that requirement.
- The format for submitting required information (e.g., SF 1411).
- Necessary preaward or postaward access to offeror’s records if not provided by use of SF 1411 or other standard clauses. [§15.804-6, Table 15-2, §52.215-41, and Standard Form 1411, FAC 90-32, Case 94-721]

### \$ Contracting officers may authorize submission of cost or pricing data via a different hardcopy format (by incorporating the provision at 52.215-41 with Alternate I) or via electronic formats (by using Alternate III) in addition to Standard Form 1411. [§15.804-8 and 52.215-41 , FAC 90-32, Case 94-721]

# UNIT 38 PRICING INFORMATION FROM OFFERORS

## Part B: Other Contract Actions

### Tasks

### Related Standards

3. Determine whether to except a contractor from the requirement for cost and pricing data when the agreed upon price is based on adequate price competition.	B3. Correctly apply the standard at in FAR 15.804-1(b)(1)(iii).
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☞ Even when NO competition is expected on the instant contract action, the FAR continues to allow exceptions from the requirement for cost or pricing data “based on” adequate price competition — e.g., “Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items purchased in comparable quantities, under comparable terms and conditions under contracts that resulted from adequate price competition.” [§15.804-1(b)(1)(iii), FAC 90-32, Case 94-721]



# UNIT 38 PRICING INFORMATION FROM OFFERORS

## Part B: Other Contract Actions

### Tasks

### Related Standards

4. Determine whether to except a contractor from the requirement for cost or pricing data when the agreed upon price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public.	B4. Correctly apply the standards in FAR 15.804-1(b)(2).
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#### *Requesting The Exception*

**There is NO Standard Form 1412.** To qualify for the catalog or market price **exception**, the offeror must submit a written request. [§15.804-1(d), FAC 90-32, Case 94-721]

#### *Shortcuts for Commercial Items*

§15.804-1(c), FAC 90-32, Case 94-721

1. **New** — Contracting officers need not obtain information to support an exception for every line item. Instead, they can sample line items as the basis for an overall position on applicability of the exception and price reasonableness.
2. If the U.S. Government has acted favorably on an exception request for the same or similar items, contracting officers may consider the prior submission as support for the new request — but must still determine the reasonableness of the price of the current acquisition. (not new).
3. **New** — When acquiring by separate contract an item included on an active Federal Supply Service or Information **Technology** Service Multiple Award Schedule contract, grant the exception without requiring documentation if the offeror provides proof that an exception has been granted for the schedule item. Perform price analysis to determine price reasonableness.
4. Make a special arrangement with the contractor for exception requests to support repetitive acquisitions. **New** — These arrangements can take any form as long as they set forth an effective period and the exception criteria at 15.804-1 are satisfied. Such arrangements may be extended to other Government offices with their concurrence.

#### *Market Pricing*

§15.804-1(b)(2), FAC 90-32, Case 94-721

**\$** There is no fundamental change in the standard for determining whether an offered price can be considered an “established market price” — a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the **offeror**.

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### Tasks

### Related Standards

**\$** In lieu of preparing an SF 1412, the new provision at §52.215-41 requires offerors to submit the following information to support requests for the market price exception:

- Market price information, include the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts.
- A description of the nature of the market.
- Data supporting substantial sales to the general public.

### Catalog Pricing

§15.804-1(b)(2), FAC  
90-32, Case 94-721

**\$** The FAR eliminates:

- Relational formula (i.e., the ABC test) as a basis for determining whether there have been sufficient sales to the general public at the catalog price to warrant an exception.
- Requirements for offerors to account for "government end use" when addressing sales to the general public.

**\$** Instead of a formula, the FAR establishes the following as standards for "sales in substantial quantities to the general public":

- Substantial quantities means sales of more than a nominal quantity **based on the norm of the industry segment, considering such factors as the size of the market and how recently the item was introduced into the market.**
- Services must continue to meet the additional test of being "customarily provided by the offeror, using personnel regularly employed and equipment (if any is necessary) regularly maintained principally to provide the service".
- The general public **ordinarily** consists of buyers other than the U.S. Government or its instrumentalities, e.g., U.S. Government corporations. Contracting officers can continue to exclude sales for Government end use, **as long as this can be determined without requiring information** (e.g., on how their customers inventory and use the items) **from the offeror.**
- When counting sales to the general public, continue to exclude **sales to affiliates of the offerors or** purchases by the U.S. Government on behalf of foreign governments, such as for Foreign Military Sales.

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#### Related Standards

**\$** In lieu of preparing an SF 1412, the new provision at §52.215-41 requires offerors to submit the following information when requesting a catalog price exception:

- A copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made.
- A copy or description of current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, and reseller.
- Evidence of substantial sales to the general public for each catalog item that exceeds an amount designated by the contracting officer (extended value, not unit price). This may include sales orders, contracts, shipments, invoices, actual recorded sales or other records that are verifiable. In addition, if the basis of the price proposal is sales of essentially the same commercial item by affiliates, other manufacturers or vendors, those sales may be included.
- An explanation of the basis of each offered price and its relationship to the established catalog price. When substantial general public sales have also been made at prices other than catalog or price list prices, the offeror shall indicate how the proposed price relates to the price of such recent sales in quantities similar to the proposed quantities.

**\$** The FAR preserves the concept of “based on” prices — A price may also be based on an established catalog or market price if the item **or class of items** being purchased is not itself a catalog or market priced commercial item but is sufficiently similar to the catalog or market priced commercial item to ensure that any difference in prices can be identified and justified without resorting to cost analysis.

*“Based on”  
Prices*

[§15.804-1(b)(2),  
FAC 90-32, Case 94-  
721

# UNIT 38 PRICING INFORMATION FROM OFFERORS

## Part B: Other Contract Actions

### Tasks

### Related Standards

#### *No Discretionary Criteria*

**\$** FAR 15.804-3(g) used to provide for “individual or class exemptions” for granting a catalog or market price exemption for exceptional cases even though “the case does not strictly meet all the criteria for catalog- or market-price exemption.” That authority has been deleted.

#### *Requirement for Price Analysis*

**\$** The FAR reminds contracting officers that “qualifying for an exception” does not necessarily mean that the offered price is fair and reasonable. Price analysis is still required, and the contracting officer shall ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists. [§15.804-5, FAC 90-32, Case 94-721]

#### *Audit Rights*

**\$** Since the SF 1412 has been eliminated, the Government no longer has the right established by that Standard Form to audit contractor records after award “until the expiration of 3 years from the date of final payment under a contract resulting from this proposal.” The provision at §52.215-41 instead **grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.**

If this access right is NOT adequate, the contracting officer may draft different language regarding preaward and/or postaward access to contractor records to the extent necessary for evaluating the proposed price. [§15.804-6(a), 15.804-8, and §52.215-41, FAC 90-32, Case 94-721]

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5. Determine whether to except a contractor from the requirement for cost and pricing data when prices agreed upon are based on prices set by law or regulation.	B5. Correctly apply the standards in FAR 15.804-1(b)(3).
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**\$** There is **NO Standard Form 1412**. To **qualify** for the catalog or market price **exception**, the offeror must submit a written request. The new FAR 52.215-41 requires this request to include:

- Identification of the law or regulation establishing the price offered.
- A copy of the controlling document (unless previously submitted to the contracting office) if the price is controlled under law by periodic rulings, reviews, or similar actions of a Governmental body.

No basic change was made in the standards for determining the applicability of this exception. [§15.804-1(b)(3) and §15.804-1(b)(d) and §52.215-41, FAC 90-32, Case 94-721]

6. Determine whether to except the contractor from the requirement for cost and pricing data when the Government is acquiring a “commercial” item.	B6. Correctly determine whether the deliverable is properly classified as a “commercial item”. Correctly apply the standards in FAR 15.804-1(b)(4) in determining whether the exception applies.
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**\$** There is a new exception for commercial items. To determine the applicability of this exception, seek information from the contractor and/or other sources on prices at which the same or similar items have been sold in the commercial market. When requesting such information for this exception:

- Limit, to the maximum extent practicable, the scope of requested pricing information to include only information that is in the form regularly maintained by the offeror in commercial operations.
- Limit requests for sales data relating to commercial items to data for the same or similar items during a relevant time period.

[§15.804-1(a)(2), §15.804-1(b)(4) and §15.804-5(b), FAC 90-32, Case 94-721]

**\$** Grant the exception **ONLY IF**

- The pricing information is adequate for evaluating, through price analysis, the reasonableness of the price of the action, AND
- The contracting officer does NOT have sufficient information to support a FAR §15.804-1(a)(1) exception (e.g., an exception based on adequate price competition,

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catalog pricing, market pricing, or prices fixed in law or regulation) or, for modifications, a §15.804-1(a)(4) exception. [§15.804-1(a)(2) & §15.804-1(b)(4), FAC 90-32, Case 94-721]

Otherwise, require cost or pricing data (if no other exception applies) and prepare a written determination that the **pricing** information is inadequate for performing a price analysis and determining price reasonableness. [§15.804-1(a)(2), §15.804-1(b)(4), FAC 90-32, Case 94-721]

**\$** The new clause at §52.213-43 authorizes the Government to examine the pricing information provided by the offeror, Contractor, or subcontractor, for the new commercial item exception at §15.804-1(a)(2)— along with all records that directly relate to such information. **Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the marketplace.** This right expires two years after the date of award of the contract, or two years after the date of any modification to the contract. Use this clause when the “commercial item” exception alone applies — do not use it if the catalog or market price exception applies.. [§52.213-43, FAC 90-32, Case 94-721]

<p>7. Collect and analyze information other than cost or pricing data.</p> <ul style="list-style-type: none"><li>• Price-related information from sources other than offerors.</li><li>• Information related to prices from the offeror.</li><li>• Cost information which does not meet the definition of cost or pricing data at 15.801.</li></ul>	<p>B7. Identify and collect information necessary for reviewing the requested exception (or waiver) and negotiating a fair and reasonable price.</p> <p>For this purpose, start with:</p> <ul style="list-style-type: none"><li>• Information from acquisition histories.</li><li>• Information collected prior to soliciting as part of market research.</li><li>• Information furnished by the offeror to support its request for an exception.</li></ul> <p>If you need additional pricing information, obtain the information from sources other than offerors to the maximum extent practicable (relying first on information available within the Government and second on information obtained from sources other than the offeror).</p> <p>Only require additional information from the offeror to the extent necessary for reviewing the exception and determining price reasonableness. Collect such information:</p> <ul style="list-style-type: none"><li>• As part of the process of reviewing the offeror's request for an exception (i.e., subject to the same audit rights that apply to information initially furnished with the request for an exception).</li><li>• During factfinding and price negotiations.</li></ul>
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**\$** If cost or pricing data are not required because an exception applies, “the contracting officer shall make a price analysis to determine the reasonableness of the price and any need for further negotiation”. [§15.804-5(a)(1) , FAC 90-32, Case 94-721]

**\$** The contracting officer may require submission of information other than cost or pricing data — but only to the extent necessary to determine price reasonableness or cost realism.

- To the maximum extent practicable, limit the scope of the request to include only information that is in the form regularly maintained by the offeror in commercial operations.
- Use the **contractor's format for submitting such information unless use of a specific format is essential.**
- **Ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price.**
- Do NOT require contractor to certify such information under §15.804-4.
- Limit **requests for updates to information previously supplied by an offeror to that which affects the adequacy of the proposal for negotiations, such as changes in price lists.** [§15.804-5(a)(2) , FAC 90-32, Case 94-721]

8. Determine whether to recommend a waiver by the head of the contracting activity of the requirement for cost or pricing data.	B8. Correctly apply the standards in FAR 15.804-1(b)(5).
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**\$** Only the head of a contracting activity (HCA) may waive the requirement for certified cost or pricing data (and the HCA cannot delegate this authority). (94-721)

**\$** Consider a **waiver if an exception does not apply but the price can be determined to be fair and reasonable without submission of cost or pricing data. For example, if cost or pricing data were furnished on previous production buys and the contracting officer determines such data are sufficient, when combined with updated information, a waiver may be granted.** The new FAR 15.804-2(a)(1) positively encourages a waiver in such a circumstance. [§15.804-1(b)(5), FAC 90-32, Case 94-721]

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9. Obtain cost or pricing data from the contractor.	B9. If the contractor has requested an exemption from the requirement for such data, promptly notify the contractor of your determination that no exception applies.
10. Determine if cost or pricing data from a prospective subcontractor must be submitted to the Government.	<p>B10. Correctly identify all prospective subcontracts for which certified data must be submitted to the Government.</p> <p>Such data are required to support each subcontract cost estimate that is:</p> <ul style="list-style-type: none"> <li>• \$1,000,000 or more, or</li> <li>• More than the cost or pricing data threshold and also more than 10% of the prime contractor's proposed price, or</li> <li>• Necessary for adequately pricing the prime contract.</li> </ul>

**\$** The FAR raises the dollar threshold for direct submission to the Government by of cost or pricing data by prospective subcontractors. [§15.806-2, FAC 90-32, Case 94-721]

<p>11. If offeror refuses to provide or certify cost or pricing data, withhold award or price adjustment and refer contract action to higher authority.</p> <p>Subtasks:</p> <ul style="list-style-type: none"> <li>• Obtain written waiver from agency head provided product or service is a priority requirement and supplier is only feasible source.</li> <li>• Negotiate with alternate source.</li> </ul>	
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<p>12. Identify any information which are inaccurate, incomplete, or noncurrent and take appropriate action.</p> <p>Subtasks:</p> <ul style="list-style-type: none"> <li>• Request that auditors verify cost information (if any) provided by the contractor (see Unit 39).</li> <li>• Double-check the information during price and/or cost analysis (see Units 37 and 40).</li> <li>• Question suspect information data during discussions (see Units 43-45).</li> <li>• Require corrected information data or make allowance for incorrect information.</li> </ul>	<p>B12. Accurately verify that the offeror has complied with submission instructions. For cost or pricing data, accurately verify that the offeror has submitted a complete and internally consistent SF 1411 (including the supporting data. Cost or pricing data, as submitted, must satisfy the instructions and format of Table 15-2 in FAR Part 15.</p>
<p>13. Determine the “as of” date for certification.</p>	<p>B13. Negotiate a date that establishes a reasonable allowance for the time required by corporate personnel (e.g., corporate buyers) to recognize and transmit relevant data to corporate negotiators, assuming reasonable efficiency and competence.</p>

**\$** The parties can agree to an “as of” (i.e., closing or cutoff) date for cost or pricing data that differs from the date of agreement on price. Generally, closing or cutoff date should be no earlier than several days prior to the expected close of price negotiations. This provides a reasonable opportunity for the contractor’s negotiator to become aware of relevant data prior to the agreement on price. It is not reasonable to assume (as prior policy assumed) that a contractor’s negotiator is instantly aware of all data received up to the last second before the date and time of agreement on price, regardless of where the data entered the company or who received the data.

On the other hand, the greater the difference in time, the greater the risk to the government. Don't allow the contractor to be accountable for something that it is not reasonable to hold the contractor accountable for, but, on the other hand, do not allow so much lead time that you can be gamed.

The FAR encourages the contracting officer and contractor to reach a prior agreement on criteria for establishing such closing or cutoff dates when appropriate in order to minimize delays associated with proposal updates. The FAR also encourages contractors to include a closing or cutoff date as part of the data submitted with the proposal. Before agreement on price, contractors should update the data to the latest closing or cutoff dates for which the data are available. [§15.801, the certificate at §15.804-4, §15.804-4(c), and 15.804-6(c) and (d), FAC 90-32, Case 94-721]

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14. Obtain from offeror (including proposed sub-contractor, if appropriate) a properly executed "Certificate of Current Cost or Pricing Data."	B14. Certification should be executed as of the date of final agreement on price. The certificate must conform to FAR 15.804-4.
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**\$** If the contracting officer determines that an exception applies after the closing date for proposals, any information furnished by the offeror shall no longer be considered “cost or pricing data” for the purposes of certification or defective pricing. You may not require the contractor to certify that information, and the contractor will NOT be subject to “defective pricing” reductions and penalties if the furnished information fails the “current, complete, and accurate” test. [§15.804-2(C) and §15.804-4(e), FAC 90-32, Case 94-721]

15. Determine whether to require certified cost or pricing data for procurements under the current dollar threshold for requiring certified cost or pricing data.	
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**\$** Contracting officers may still require cost or pricing data below the cost or pricing data threshold, but only if:

- No exception applies (e.g., absence of adequate price competition, prices not set by law or regulation, no catalog or market price, etc.), AND
- The head of the contracting activity personally (i.e., no delegation) authorizes the requirement and justifies the requirement — including a written finding that cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding. [§15.804-2(a)(2), FAC 90-32, Case 94-721])

**\$** The FAR no longer enumerates reasons why cost or pricing data might be necessary for pricing contract actions under the \$500,000 threshold. However, those reasons are still valid considerations. (94-721)

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<p>16. Require submission of information other than cost or pricing data, either by:</p> <ul style="list-style-type: none"> <li>• Incorporating Alternative IV, FAR 52.215-41 in the request for proposals.</li> <li>• An addendum of your own devising.</li> </ul>	<p>B16. Request such information only if:</p> <ul style="list-style-type: none"> <li>• The contracting officer has decided not to require certified cost or pricing data AND</li> <li>• Information other than cost or pricing data are necessary to verify price reasonableness.</li> </ul>
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**\$** Contracting officers may require “information other than cost or pricing data” when necessary to determine reasonableness of the price for actions under the dollar threshold for cost or pricing data. You may NOT require or request certification of the information. Such information is not subject to defective pricing reductions or penalties.[§15.804-5(a)(1), FAC 90-32, Case 94-721]

**\$** When soliciting offers under the cost or pricing data threshold, contracting officers may insert the new FAR provision 52.215-41, with its Alternate IV to require information related to price reasonableness (e.g., data on direct costs for negotiation with a sole source vendor). Alternate IV replaces the text of the basic provision with the following:

“(a) Submission of cost or pricing data is not required.

(b) Provide information described below: *(Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.804-6(a)(5). Standard Form 1448, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data.)*”

[§15.804-8 and §52.215-41, FAC 90-32, Case 94-721]

<p>16.1 Determine the extent and types of information to require.</p>	
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**\$** Request, as a minimum, “appropriate information on the prices and quantities at which the same or similar items have previously been sold, that is adequate for evaluating the reasonableness of the proposed price”. Cost information may also be required. For example, cost information might be necessary to support an analysis of material costs” (when sufficient information on labor and overhead rates is already available). [§15.804-5(a)(4) and Table 15-3, FAC 90-32, Case 94-721]

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<p>16.2 Specify requirements for information other than cost or pricing data.</p> <p>Indicate:</p> <ul style="list-style-type: none"><li>• That cost or pricing data are NOT required.</li><li>• The information that is required.</li><li>• The format for submitting required information.</li><li>• Any necessary preaward or postaward access to offeror's records.</li></ul>	
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☞ Submission instructions must address:

- That cost or pricing data are NOT required (not new).
- **New** — The information required (if any) when cost or pricing data are not requested
- Formats for submitting information other than cost or pricing data.
- **New** — Any necessary preaward or postaward access to offeror's records not otherwise provided in standard forms or FAR clauses. [§15.804-6(a), FAC 90-32, Case 94-721]

**\$** Offerors can use the SF 1448 as a cover sheet in submitting required information for price reasonableness determinations for actions under the cost or pricing data threshold. Information submitted by offerors with this form is NOT considered cost or pricing data and shall NOT be certified in accordance with 15.804-4. On the other hand, the SF 1448 for the first time provides the Government with the right to “examine, at any time before award, any of those books, records, documents, or other records directly pertinent to the information requested or submitted.” See the new FAR Table 15-3 for instructions on the use of the SF 1448. [§15.804-6, Table 15-3, and SF 1448, FAC 90-32, Case 94-721]